

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA**

| | | |
|---------------------------------|---|----------|
| THE TOWNHOMES AT FISHERS POINTE |) | |
| HOMEOWNERS ASSOCIATION, INC. |) | |
| |) | |
| Plaintiff, |) | |
| |) | Case No. |
| vs. |) | |
| |) | |
| DEPOSITORS INSURANCE COMPANY, |) | |
| |) | |
| Defendant. |) | |

NOTICE OF REMOVAL

NOW COMES Defendant, DEPOSITORS INSURANCE COMPANY, (hereinafter “Depositors”), by and through its attorney, Teresa A. Griffin and Faegre Drinker Biddle & Reath, LLP, and pursuant to 28 U.S.C. § 1446(a), hereby provides notice of the removal of the civil action currently pending in Hamilton Superior Court 2 in Hamilton County, Indiana, and states as follows:

1. Depositors is the sole defendant in a civil action filed in, and currently pending before, Hamilton Superior Court 2 in Hamilton County, Indiana, styled as *The Townhomes at Fishers Pointe Homeowners Association, Inc. v. Depositors Insurance Company*, Cause No. 29D02-2302-PL-001660 (the “Indiana State Court Action”).

2. The Complaint in the Indiana State Court Action was filed with the Clerk of Hamilton County, Indiana, on or about February 17, 2023. *See* Copy of Complaint to Supplement or Set Aside Insurance Appraisal Award, for Breach of Contract, and Bad Faith Claim Handling, included with **Attachment #1**¹ and at **Attachment #2**.²

¹ **Attachment #1** is the State Court Record per Local Rule 81-2, which is complete as of the date of removal.

² **Attachment #3** is the Civil Cover Sheet per Local Rule 81-2.

GROUND FOR REMOVAL

3. This action is removable pursuant to 28 U.S.C. § 1441(a) in that it is an action over which the District Courts of the United States have original jurisdiction under 28 U.S.C. § 1332. There is complete diversity of citizenship between Plaintiff and Defendant, being citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

4. Plaintiff is a citizen of the State of Indiana.³ Plaintiff's principal office is located at 5702 Kirkpatrick Way, Indianapolis, IN 46220.

5. At all times relevant, Depositors is an Iowa corporation with its principal place of business at 1100 Locust Street, Des Moines, Iowa 50391-1100. Thus, Depositors Insurance Company is a citizen of Iowa.⁴

6. In addition, the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(a).

7. In its Complaint, Plaintiff seeks “the amount of the reasonable cost of repair of roof slopes on the 11 subject HOA buildings not included in the Award” which cost is “over Three Hundred Thousand Dollars (\$300,000)[.]” Compl. ¶ 29-30. Plaintiff further seeks damages for Depositors’ alleged breach of “its contractual obligations by failing to . . . pay the claim in full.” *Id.* at ¶ 35. Additionally, Plaintiff alleges that it “has been damaged as a proximate result of the breach of the duty of good faith and fair dealing.” *Id.* at ¶ 39. Plaintiff requests the “Court enter judgment in its favor and against [Depositors] in an amount as shown by the evidence, punitive damages, prejudgment interest, reasonable attorney fees, for costs, and for all other proper relief.” *Id.* at p. 7.

³ *See* Townhomes at Fishers Pointe Homeowners Association, Inc.’s listing on the Indiana Secretary of State’s website, attached as **Exhibit A** (last visited 2.24.2023).

⁴ *See* Depositors’ listing on the Iowa Secretary of State’s website, attached as **Exhibit B** (last visited 2.24.2023).

COMPLIANCE WITH REMOVAL PROCEDURES

8. This Notice of Removal is properly filed in the United States District Court for the Southern District of Indiana, Indianapolis Division, because the Superior Court in Hamilton County, Indiana, is located in this federal judicial district and division.

9. This Notice is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure. 28 U.S.C. § 1446(a).

10. Copies of the docket and all process and pleadings received by Depositors in the Indiana State Court Action to date are attached hereto as **Attachment #1**.

11. Pursuant to 28 U.S.C. §§ 1446(d), a copy of this Notice of Removal is being filed with the Superior Court in Hamilton County, Indiana, in Case No. 29D02-2302-PL-001660. A copy of the Notice of Filing of Notice of Removal that will be filed with the Clerk of the Superior Court in Hamilton County, Indiana, is attached as **Exhibit C**.

12. Written notice of the filing of this Notice of Removal is being served on Plaintiff's counsel on this date.

13. This Notice is being filed with this Court within thirty (30) days of the date on which Defendant received a copy of the Complaint (February 17, 2023). Defendant has not received service of process. Accordingly, this Notice of Removal is timely under 28 U.S.C. § 1446(b).

14. Within twenty (20) days of removal, all attorneys of record not admitted to practice before this Court will comply with the Court's admission policy, as set forth in Local Rule 83.5.

15. In filing this Notice of Removal, Depositors does not waive any defense that might be available to it in this action.

WHEREFORE, for the foregoing reasons, Depositors respectfully requests that this Court exercise jurisdiction over this removed action and enter orders and grant relief as may be necessary to secure removal and to prevent further proceedings in the Superior Court in Hamilton County, Indiana, and award to Depositors all other relief to which it is justly entitled.

JURY DEMAND

Defendant, Depositors, by counsel, demands trial by jury.

By: /s/ Teresa A. Griffin
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CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2023, a copy of the foregoing DEFENDANT’S NOTICE OF FILING OF NOTICE OF REMOVAL was filed electronically and notice of the filing of this document was sent to the following known counsel and parties of record in the underlying state court matter:

Donald D. Levenhagen, Attorney
P.O. Box 501370
Indianapolis, IN 46250

/s/ Teresa A. Griffin
Teresa A. Griffin